Supreme Court, U.S.
FILED
JUL 14 1986
JOSEPH F. SPANIOL, JR.
CLERK

(3)

No. 85-2041

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

COLONY SQUARE COMPANY,
Petitioner,

v.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION

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July 14, 1986

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ISSUES PRESENTED

Petitioner filed a voluntary bankruptcy proceeding under Chapter XII of the now repealed Bankruptcy Act of 1898. As part of the confirmed plan of arrangement, it assumed certain obligations with respect to various debts and property. To supervise and enforce the arrangement, the bankruptcy court retained exclusive jurisdiction of the relevant property, parties, and subject matter. In order to avoid these obligations and to defeat the jurisdiction of the bankruptcy court, petitioner then filed a second bankruptcy petition in another jurisdiction under the newly enacted Bankruptcy Act of 1978, which it claimed superseded and stayed its previously filed, though still pending, Chapter XII proceeding. Certain parties affiliated with petitioner also filed an involuntary petition, thereby initiating a third case, which petitioner likewise claimed superseded and stayed the pending proceedings in the first case. Courts in both jurisdictions issued a variety of orders and rulings to protect the jurisdiction of the original bankruptcy court and to enforce the terms of the debtor's plan of arrangement.

The question presented is:

> Did the Court below err in holding that, in light of the terms of the agreements of the parties, the original plan of arrangement, the original confirmation order and applicable law, the bankruptcy court acted properly to protect its jurisdiction over the debts, property and parties in the original, still-pending bankruptcy action filed by petitioner, and to enforce the undertakings of the petitioner as the debtor therein?

PARTIES TO THE PROCEEDING

The parties to the proceedings below were the petitioner, Colony Square Company, a Georgia Limited Partnership, and the respondent, The Prudential Insurance Company of America.[1]

[1] Pursuant to Rule 28.1 of this Court, The Prudential Insurance Company of America states that it has no non-wholly-owned subsidiaries or affiliates that have outstanding securities in the hands of the public.

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BRIEF IN OPPOSITION

The Prudential Insurance Company of America ("Prudential") files this Brief in Opposition to the Petition for a Writ of Certiorari filed by Petitioner, Colony Square Company ("Colony").

OPINIONS BELOW

Although styled as a petition to review two opinions of the United States Court of Appeals for the Eleventh Circuit dated January 10, 1986 and May 6, 1986 (reported at 779 F.2d 653 and 788 F.2d 739, and reproduced at Pet. App. 1a and 5a, respectively), the petition in effect

seeks review of the entire procedural history of three related cases. The complex course of proceedings in these three cases is only partially set out in the more than twenty decisions and orders of two panels of the Court of Appeals for the Eleventh Circuit, the District Courts for the Northern District of Georgia and the Western District of Pennsylvania, and the Bankruptcy Courts for the Northern District of Georgia and the Western District of Pennsylvania that are contained in the Appendix to the Petition.

COUNTERSTATEMENT OF THE CASE

A. Colony's 1975 Petition Under Chapter XII of The Bankruptcy Act and the Bankruptcy Court's Retention of Jurisdiction

On October 16, 1975, Colony filed in the Bankruptcy Court for the Northern District of Georgia a voluntary petition under Chapter XII of the Bankruptcy Act of 1898 (the "Act"). On March 30, 1977, the Chapter XII Plan ("Plan") proposed by Prudential, Colony's largest creditor, was confirmed by order of that court, after substantial negotiation and agreement by Colony. Colony's debt to Prudential was *not* discharged. (Pet. at 19.) Rather, under the terms of the Plan and Confirmation Order ("Order"), Prudential and Colony entered into a series of relationships and agreements whereby Colony was to repay its debt and the Court retained exclusive jurisdiction over the parties to enforce the terms of the Plan.

Pursuant to the Plan, Prudential and Colony entered into a relationship as landlord (Colony) and tenant (Prudential) with regard to certain real property generally known as the Colony Square Complex (the "Property"), while at the same time maintaining the previously established relationship of lender (Prudential) and borrower (Colony). The Property also was security for Colony's debt to Prudential. Under the Lease, Prudential was to take possession of and operate the Property for a

period initially ending December 31, 1981. Colony had the right to terminate the Lease and redeem possession of the Property by (a) paying Prudential's debt, or by bringing Prudential's debt current, and (b) reimbursing Prudential for its cash contribution in excess of five million dollars, necessary to fund the Plan, as well as paying Prudential for substantial capital and leasehold improvements made to the Property during the period of Prudential's possession and management. (Pet. App. 28a.)

Under the terms of a Moratorium Agreement entered into concurrently with the Lease, Prudential postponed for the original term of the Lease its right to enforce its claims based on Colony's indebtedness, provided that, among other requirements, Colony made certain annual cash contributions. If Colony did not perform its annual obligations or redeem the Property by paying Prudential's debt (or at least by bringing its debt to Prudential current) and making the extra reimbursement payments, Prudential could then exercise its remedies set forth in the Plan documents. A specific remedy available to Prudential, negotiated by the parties and approved by the court (as were all aspects of the agreements), was the option to purchase the Property in lieu of foreclosure in exchange for cancellation of Colony's indebtedness to Prudential. (Pet. App. 28a-29a.)

Both the Plan and the Order, by their express terms, provided that the Bankruptcy Court retained its exclusive jurisdiction under the statute, *see* Bankruptcy Act, Sec. 411, former 11 U.S.C. § 811, to enforce the rights and obligations of the parties under the Plan.[1] The Order

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[1] Specifically, the Plan, ¶ IV(B)(2) (Pet. App. 65a), provided that:

> "Following confirmation, the Court will (i) retain jurisdiction to supervise the effectuation of this plan and to issue ancillary orders as may be necessary in connection therewith, and (ii) retain exclusive jurisdiction over the Remaining Property to

also provided that the general injunction prohibiting further creditor suits against Colony did not apply to Prudential. Instead, the order specifically authorized Prudential to exercise the remedies provided for it in the Plan including, without limitation, the provisions of the Lease and Moratorium Agreement.[2]

Because the Plan remained to be carried out, and Colony's debt to Prudential was not discharged, no final decree was issued in the original Chapter XII bankruptcy proceeding and the case remained and continues to remain open.

B. Colony's Failure to Meet Its Obligation Under the Plan and Prudential's Exercise of Its Option to Require a Deed in Lieu of Foreclosure

From confirmation in March 1977 until 1981, Colony met its obligations under the Plan, never once complaining, as it had the right to do, of any alleged mismanagement of the Property by Prudential.[3] In October 1981, however, Colony failed to make its required $300,000 cash contribution; it also failed to pay Prudential in full or bring its debt current. Accordingly, under the terms

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supervise and enforce the compliance by CSC and Prudential with their agreements with each other. . . ."

The Order, ¶ (f) (Pet. App. 65a), provided that:

"This Court shall retain jurisdiction to enforce this order and the Plan. . . . [T]his Court shall, as provided in the Plan, retain exclusive jurisdiction of the Debtor's property leased to Prudential for the purpose of enforcing the provisions of the Plan with respect thereto."

[2] In this regard, the Moratorium Agreement, ¶¶ 3.03, 7.01, provided that "Colony shall not assert any claim against Prudential" in reduction of the amount owed to Prudential "but instead shall maintain any such claim by separate action."

[3] If Colony were to object to Prudential's management, Prudential had the opportunity under the Lease to cure any alleged default. Lease, ¶ 15.1. (Pet. App. 39a-40a.)

of the Plan, Colony's entire debt to Prudential became due and payable on January 1, 1982.

On January 8, 1982, Prudential notified Colony that it was exercising its option to require a deed in lieu of foreclosure for the Property. Prudential also set a time for the tender of the requisite documentation on January 29, 1982. (Pet. App. 30a.)

C. Colony's Unsuccessful Efforts to Avoid Its Obligations Under the Plan

In an effort to avoid its obligations under the Plan, Colony immediately embarked on an elaborate series of procedural maneuvers and collateral litigation which continues to the present.

1. *Colony's Second Bankruptcy Case*

On January 28, 1982, one day before the tender was to take place, Colony filed in the Bankruptcy Court for the Western District of Pennsylvania a Petition for Reorganization ("Case Two") under Chapter 11, Title 11, United States Code, as amended by the Bankruptcy Reform Act of 1978 (the "1978 Reform Act").[4] Colony argued that, under the stay provisions of the Code, 11 U.S.C. § 362, the filing of this new petition superseded and stayed its obligations in its pending bankruptcy proceeding in Georgia and, indeed, divested the Georgia Bankruptcy Court of jurisdiction. The United States District Court for the Western District of Pennsylvania rejected this argument, *Prudential Insurance Co. of America v. Colony Square*, 29 B.R. 432 (W.D. Pa. 1983) and, following Colony's unsuccessful attempts to appeal

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[4] The 1978 Reform Act, which became effective starting October 1, 1979, superseded the Bankruptcy Act of 1898 ("Act") except with respect to pending cases commenced under the Act. *See* Section 403(a), Pub. L. No. 95-598, 92 Stat. 2683 (1978), note preceding 11 U.S.C. § 101, and *Central Trust Co. v. Official Creditors Committee of Geiger Enterprises, Inc.*, 454 U.S. 354, 375 (1982), discussed *infra* at pp. 13, 15.

that ruling, Case Two was transferred to the District Court for the Northern District of Georgia. On February 2, 1984, the Georgia District Court referred Case Two to the Bankruptcy Court for the Northern District of Georgia, which had retained jurisdiction over the parties, property and debts at issue in Colony's pending bankruptcy proceeding.[5]

2. *Prudential's Motion to Compel Compliance With the Plan*

On February 9, 1984, Prudential filed a motion in the Chapter XII case in the Georgia Bankruptcy Court to compel Colony's compliance with the Plan. In response Colony once again argued that the filing of its second bankruptcy petition (Case Two) triggered the stay provisions of the newly enacted Code, 11 U.S.C. § 362, thereby superseding and suspending any further proceedings to enforce the terms of the Plan in the still pending Chapter XII case. Colony also argued that it was entitled to assert claims that Prudential mismanaged the Property as "affirmative defenses" in opposition to Prudential's motion. After full briefing and several hearings, on May 14, 1984, the Bankruptcy Court issued a detailed opinion and order in the Chapter XII case (a) denying Colony's request to consider Colony's claims against Prudential as an affirmative defense to Prudential's motion to compel compliance with the Plan,[6] and (b) scheduling a final hearing on Prudential's motion to compel compliance. (Pet. App. 57a.)

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[5] Because Case Two involved property already subject to administration in the pending proceeding and because the provisions of the new Bankruptcy Code do not apply to proceedings filed under the Act, the Georgia Bankruptcy Court, on March 26, 1984, dismissed Case Two for lack of subject matter jurisdiction.

[6] The Court severed Colony's mismanagement and other claims so that they might be maintained in a separate action for damages, as provided in the Moratorium Agreement.

3. *Colony's Third Bankruptcy Case*

In the meantime, following the dismissal of Case Two, on April 30, 1984, unsecured creditors affiliated with certain of Colony's limited partners filed an "involuntary" petition under Chapter 7 of the Code against Colony in the Pittsburgh Bankruptcy Court. Colony then voluntarily converted this "involuntary" Chapter 7 case to a Chapter 11 case under the Code on June 20, 1984 ("Case Three").

4. *The Georgia Bankruptcy Court's Orders Declining to Stay Its Proceedings, Enforcing the Plan and Protecting Its Jurisdiction*

On June 22, 1984, the Georgia Bankruptcy Court held the final evidentiary hearing on Prudential's motion to compel compliance with the Plan, after which, on June 25, 1984, the Bankruptcy Court entered an Order enforcing the Plan and Order.

Relying on the analysis implicit in its prior Order dismissing Case Two for lack of subject matter jurisdiction, the Bankruptcy Court also rejected Colony's argument that the Court and Prudential were stayed from further proceedings by the filing of Case Three. (Pet. App. 46a-47a.) Counsel for Colony then threatened to bring an immediate contempt action in Pittsburgh, if Prudential proceeded with the hearing.[7] (Tr. 6/22/84 at 4.) To avoid disruption of the Georgia bankruptcy proceedings, Prudential filed a motion for the issuance of an order in aid of the Court's jurisdiction. After a further hearing, on June 25, 1984, the Georgia Bankruptcy Court issued an order precluding Colony, its counsel, partners, and creditors, from pursuing further proceedings in any other court (other than on appeal) with respect to the

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[7] In fact, Colony did so and also brought a Motion for Temporary Restraining Order before the Pittsburgh Bankruptcy Court, which declined to act.

Property and its undischarged debt to Prudential. (Pet. App. 45a.)

D. The Decisions of the Georgia District Court Affirming (i) the Order Enforcing the Confirmation Order and the Chapter XII Plan, (ii) the Order in Aid of Jurisdiction, and (iii) the Order Dismissing Case Two

Colony appealed all of the rulings of the Georgia Bankruptcy Court to the United States District Court for the Northern District of Georgia.

On April 2, 1985, in a long and thorough opinion, the District Court affirmed (i) the Bankruptcy Court's June 25, 1984 order enforcing the Plan and Order and (ii) its May 4, 1984 order severing trial of Colony's claims against Prudential from proceedings on Prudential's motion to enforce the Plan.[8] (Pet. App. 26a.)

On June 28, 1985, in two additional, carefully reasoned opinions, the District Court affirmed (i) the Bankruptcy Court's March 26, 1985 order dismissing Case Two as well as (ii) its order in aid of jurisdiction (also entered on June 25, 1984). (Pet. App. 11a, 18a.)

E. The Decisions of the Court of Appeals

Colony appealed all of the rulings of the District Court to the United States Court of Appeals for the Eleventh Circuit.

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[8] It also vacated the provisional stay pending appeal of the June 25, 1984 Order. In response, Colony filed an "Emergency Motion to the United States Court of Appeals for the Eleventh Circuit for Stay of Judgment and Order Pending Appeal" which was denied on April 8, 1985. Colony immediately filed a similar emergency motion in the United States Supreme Court. This motion was also denied, on April 11, 1985, by The Honorable Lewis F. Powell, Jr., Associate Justice of the Supreme Court of the United States and Circuit Justice for the Eleventh Circuit.

1. *Case No. 85-8216*

On January 10, 1986, a panel of the Court of Appeals affirmed *per curiam* the District Court's decision that the bankruptcy court correctly determined that the filing and pendency of the Pittsburgh bankruptcy case did not prevent the Georgia bankruptcy court from enforcing the prior Plan. (Pet. App. 5a.) The Court of Appeals held that the 1978 Reform Act, including the new Code and its stay provisions, 11 U.S.C. § 362, on which Colony based its claims, did not apply to pending bankruptcy cases filed under the prior Act. In so holding, it relied on the unequivocal language of Section 403 (a) of the 1978 Reform Act and on this Court's equally clear ruling in *Central Trust Co. v. Official Creditors' Committee of Geiger Enterprises, Inc.*, 454 U.S. 354, 357 (1982), that prior pending bankruptcy cases "shall be conducted and determined under such Act as if [the 1978 Reform Act] had not been enacted." In addition, the Court based its ruling on the fact that the original Georgia bankruptcy case was still pending and that the Bankruptcy Court had expressly retained exclusive jurisdiction over the Plan, the property at issue and the parties.

The Court of Appeals also held that the District Court did not err in affirming the Bankruptcy Court's exercise of its discretion (and its construction and application of the parties' agreements) in concluding that Colony could not assert a defense of mismanagement in connection with Prudential's action to enforce the Plan, but would have to maintain such claims in a separate action for damages. In so doing, the Court relied on the terms of the agreements between the parties embodied in the Plan.

2. *Case Nos. 85-8568 and 85-8569*

On May 6, 1986, a different panel of the Court of Appeals ruled that the District Court correctly held that the bankruptcy court did not abuse its discretion when it ordered Colony and its affiliates not to pursue collateral

bankruptcy proceedings involving the property subject to the pending Georgia bankruptcy case. (Pet. App. 1a.) Relying on its prior holding in *In re Macon Uplands Venture v. Metropolitan Life Insurance Co.*, 624 F.2d 261 (5th Cir. 1980), the Court of Appeals stressed that the bankruptcy court had the power, in aid of its jurisdiction (retained by the Order and by agreement of the parties) over the pending proceeding, to prevent Colony (and others) from filing actions that touch on the property of the pending proceeding.[9]

The Court of Appeals also held that the District Court did not err in affirming the Georgia Bankruptcy Court's dismissal of Colony's second bankruptcy case. The Court found that its resolution of this issue was "compelled" by its prior ruling that Colony's second bankruptcy case did not stay the prior proceedings before the Georgia Bankruptcy Court.

REASONS FOR DENYING CERTIORARI

The petition should be denied because the holdings of the Court of Appeals below were correct, are not in conflict with the holdings of this Court or any other Court of Appeals, and do not present an important question for resolution by this Court.

The Court of Appeals' decisions do not have wide-ranging precedential value. They turned in significant part upon the unique factual and procedural circumstances of the cases below, involving the interpretation and effect of specific provisions in a particular bankruptcy plan and confirmation order as well as related agreements between the parties. They also addressed the applicability of the Bankruptcy Reform Act of 1978 to a pending bankruptcy proceeding filed under a prior statute. It is unlikely that the same issues would arise in the future, as petitioner itself implicitly concedes when it

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[9] Because none of Colony's creditors were before the Court of Appeals, it declined to decide whether the order was overly broad.

refers to the "fortuitous circumstance" involved in its own case. (Pet. at 24.)

Nor do the Court of Appeals' decisions involve novel or difficult holdings as to which there is substantial ground for disagreement. As framed by the decisions of the Court of Appeals, the issues raised and decided below were straightforward and clear cut, and bear little or no resemblance to the convoluted issues presented in the petition. In affirming the various decisions of the Bankruptcy Court and the District Court with respect to implementation of the bankruptcy plan and related agreements by petitioner, the Court of Appeals followed the clear and controlling precedents of this Court and analogous decisions of other Courts of Appeal. The decisions below do not conflict in any way with the holdings of this Court or any other Court of Appeals.

I. THE PETITION DOES NOT PRESENT ANY ISSUE OF GENERAL PUBLIC IMPORTANCE

A. The Holdings Below Were Based on the Terms of the Bankruptcy Plan and Order and on the Unique Procedural Circumstances of this Case

The Court of Appeals' decisions present no question of general public importance for this Court's review because the rulings below were based in large part on the meaning and effect of the specific terms of the agreements between the parties and the original Confirmation Order of the Georgia Bankruptcy Court, as well as on the highly unusual and complex procedural posture of these cases.

All of the rulings for which review is sought stem from petitioner's repeated and inappropriate efforts to evade its obligations in a pending bankruptcy proceeding by filing numerous cases and appeals in different courts. It was in that specific context and based on the terms of the Lease and Moratorium Agreement between the parties, the Plan of Arrangement and the Confirmation Or-

der of the Bankruptcy Court, that the Court of Appeals decided the issues for which review is sought. Many of these issues involved the careful exercise of discretion by the Georgia Bankruptcy Court with respect to the conduct of the bankruptcy proceeding pending before it.

Under these circumstances, the decisions below do not present issues of general public importance beyond the interests of the particular parties involved. They are therefore not appropriate for this Court's certiorari review. *See, e.g., Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923); *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 74 (1955)) (issues must be "beyond the academic or episodic").

In an effort to secure Supreme Court review, petitioner ignores the narrow basis of the Court of Appeals' decisions and suggests that they establish broad, new standards for the conduct of bankruptcy proceedings generally. This claim is refuted by the Court of Appeals' own recognition of the limited issues it was addressing.[10]

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[10] In Case No. 85-8216, the Court stated:

> ". . . [T]he first . . . is whether the automatic stay provision of Section 362 prevented the Atlanta Bankruptcy Court from enforcing the plan while the Pittsburgh bankruptcy case was still pending." (Pet. App. 8a.)
>
> "The second issue is whether the district court properly held that Colony Square could not assert a defense of willful and negligent mismanagement against Prudential in connection with Prudential's action to enforce the plan." (Pet. App. 9a.)

In Case Nos. 85-8568 and 85-8569, the Court stated:

> "The sole question before us in 85-8569 is whether the district court was correct in holding that the bankruptcy court did not abuse its discretion when it enjoined Colony Square." (Pet. App. 3a.)
>
> "The sole issue [in 85-8568] is whether the district court erred in affirming the Atlanta Bankruptcy Court's dismissal of Colony Square's voluntary Chapter 11 case." (Pet. App. 4a.)

B. The Applicability of the Bankruptcy Reform Act of 1978 to Previously Pending Bankruptcy Proceedings Is Not a Question of Continuing or Recurring Importance

At bottom, petitioner's varied claims all assume that the provisions of the new Bankruptcy Code, effective on October 1, 1979, apply to its prior pending bankruptcy proceedings before the Georgia Bankruptcy Court. The inapplicability of the new Bankruptcy Code to prior, pending bankruptcy proceedings was authoritatively determined by this Court four years ago in *Central Trust Co. v. Official Creditors Committee of Geiger Enterprises, Inc.*, 454 U.S. 354 (1982). *See* pp. 14-15 *infra*. There is no need for the Court to revisit this question now. Nothing has happened in the meantime to suggest that the Court's *Central Trust* decision needs reevaluation or further explication.

Further, given the passage of almost eight years since the 1978 Reform Act, issues relating to the new Code's application to previously pending Bankruptcy Act proceedings are not likely to arise in the future. As petitioner itself recognizes, the inapplicability of the new Code to prior, pending proceedings "is a purely fortuitous circumstance" (Pet. 24) which raises an issue (if at all) only with respect to debtors "caught in the transition period between the Act and the Code." (Pet. 25) Accordingly, the petition does not present a live question of general public importance for this Court to decide. *See, e.g., United States v. Abrams*, 344 U.S. 855 (1952); *Sokol Brothers Furniture Co. v. Commissioner*, 340 U.S. 952 (1951) (certiorari denied where statutes at issue expired or were amended).

II. THE COURT OF APPEALS' DECISIONS WERE CORRECT AND DO NOT CONFLICT WITH PRIOR DECISIONS OF THIS COURT OR ANY OTHER COURT OF APPEALS

A. The Court of Appeals Properly Concluded that Petitioner's Second (and Third) Bankruptcy Petitions Did Not Prevent the Georgia Bankruptcy Court from Enforcing the Plan

The essence of Colony's petition is that it has a right to perpetually reorganize by filing (or by voluntarily converting) subsequent bankruptcy petitions which, under the stay provisions of the Code, 11 U.S.C. § 362, supersede and suspend proceedings in its prior, pending case. The Court of Appeals below as well as two different District Courts correctly ruled that Colony cannot so conveniently avoid its obligations. These holdings were correct, are in complete accordance with (and indeed are controlled by) the decisions of this Court, and do not conflict with the decisions of any other Court of Appeals.

The Court of Appeals properly held that Section 403(a) of the 1978 Reform Act precludes the procedural result sought by Colony.[11] Colony's Chapter XII case was commenced under the prior Bankruptcy Act. Section 403(a) requires that it be conducted and determined as if the 1978 Reform Act, including the new Code, had never been enacted. As a result, the stay provisions of the Code on which Colony relies do not apply to petitioner's pending

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[11] Section 403(a) provides:

> A case *commenced* under the Bankruptcy Act, and all matters and proceedings in or relating to any such case, *shall be conducted and determined under such Act as if this Act [the Bankruptcy Reform Act of 1978] had not been enacted, and the substantive rights of the parties in connection with any such bankruptcy case, matter, or proceeding shall continue to be governed by the law applicable to such case, matter, or proceeding as if the Act had not been enacted.*

(Emphasis added.)

Chapter XII proceeding. In reaching this decision, the Court below correctly relied on the clear and unqualified holding of this Court in *Central Trust Co. v. Official Creditors Committee of Geiger Enterprises, Inc.*, 454 U.S. 354 (1982):

> The language of 403(a) is unequivocal. It provides that cases filed under the Bankruptcy Act '*shall* be conducted and determined under such Act as if [the 1978 Reform Act, including the new Code] had not been enacted. It makes *no* exception for petitions to be refiled under the New Code; indeed, it expressly provides that petitions such as Geiger's '*shall* continue to be governed' by the Bankruptcy Act.

454 U.S. at 357 (emphasis in original).[12]

The decisions of the Court below do not conflict with but, rather, are controlled by *Central Trust Co.* They do not extend but faithfully apply that decision. There is no support in the opinion in *Central Trust* (or in the opinion in any other case) for the proposition that the holding of *Central Trust* is confined to the artificial circumstances posited by petitioner, *i.e.*, petitions which are filed under the Code only a few weeks after petitions filed under the prior Act. Quite the contrary, other courts have not taken so restrictive a view of either Section 403(a) of the Code or this Court's decision in *Central Trust. See, e.g., 1616 Reminc Limited Partnership v. Atchison & Keller Co.*, 704 F.2d 1313 (4th Cir. 1983); *In re Lemmons & Co.*, 742 F.2d 1064 (7th Cir. 1984); *In re Macon Uplands Venture*, 7 B.R. 293, 301 (M.D. Ga. 1980); *In re Lincoln Plaza Towers Associates*, 6 B.R. 808, 815 (Bankr. S.D.N.Y. 1980).

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[12] The Court also noted that the legislative history of Section 403(a) provides that "[t]hose cases will proceed as though this Act had not taken effect. This section applies to substantive as well as procedural matters." 454 U.S. at 358 n.1.

Even without regard to the effect of Section 403(a), there is no genuine issue as to the correctness of the rulings below. By the terms of the agreements between the parties and the Confirmation Order of the Georgia Bankruptcy Court, the property in dispute and the relationships arising out of the Plan are subject to the exclusive jurisdiction of that Court. Colony's debt to Prudential had not been discharged and those proceedings were not closed. This Court's decision in *Freshman v. Atkins*, 269 U.S. 121 (1925), makes clear that the pendency of a bankruptcy case proscribes the filing of subsequent petitions seeking discharge of the same debts and involving the same property.[13] Petitioner's efforts to distinguish *Freshman* as involving a situation in which no discharge had been granted are misplaced, since there was *no discharge* of Colony's indebtedness to Prudential and Colony's prior bankruptcy proceeding was still pending—just like the one in *Freshman*.

In order to avoid the dispositive fact that the Georgia Bankruptcy Court expressly retained jurisdiction to enforce the Plan agreed to by petitioner, Colony mistakenly suggests that the opinion below conflicts with a forty-three-year-old case in another circuit. *In re Flatbush Ave.-Nevins St. Corp.*, 133 F.2d 760, 762 (2d Cir. 1943). There is no conflict. Indeed, even if *Flatbush* could still be said to represent the current views of the Second Circuit,[14] it is completely in accord with the decisions below, since it held that although a bankruptcy court could not "wet nurse" every aspect of a debtor's business indefinitely, the court was certainly able to interpret and

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[13] Petitioner cannot complain that the ruling below "fractured" the estate of the debtor when it was petitioner's own actions in seeking to avoid its obligations under the Plan that resulted in any "fracturing" of the estate.

[14] *See e.g. Guardian Mortgage Investors v. Unofficial Noteholders-Debentureholders Creditors Committee*, 607 F.2d 1020 (2d Cir. 1979); *Prudence-Bonds Corp. v. City Bank Farmers Trust Co.*, 186 F.2d 525 (2d Cir. 1951).

enforce the terms of the plan of reorganization then before it. This is precisely what happened in this case. Given the unassailable logic of this result, it is not surprising that other courts have come to the same conclusion and there are no conflicts with the decisions below.[15] *See, e.g., In re Matter of Springpark Association*, 623 F.2d 1377 (9th Cir.), *cert. denied*, 449 U.S. 956 (1980); *In re Tilco, Inc.*, 558 F.2d 1369 (10th Cir. 1977); *Jefferson v. Mississippi Gulf Craft YMCA, Inc.*, 59 B.R. 708 (Bankr. S.D. Miss. 1986).

B. The Court of Appeals Properly Concluded that the Order Severing Petitioner's Mismanagement Claims Was a Proper Exercise of the Bankruptcy Court's Discretion

Petitioner sought to defeat Prudential's efforts to enforce its rights under the Plan by attempting to raise affirmative defenses based on Prudential's alleged mismanagement of the leased property. Based upon the unequivocal language the Moratorium Agreement between Colony and Prudential, which expressly provides that "Colony shall not assert any claim against Prudential" in reduction of the amount owed to Prudential "but instead shall maintain any such claim by separate action," ¶¶ 3.03, 7.01, the courts below ruled that the parties did not intend the quality of Prudential's performance as a manager under the Lease to be a condition of its rights as a lender under the Moratorium Agreement.

This ruling is unquestionably correct, and petitioner does not seriously suggest that it is in direct and intolerable conflict with the decisions of this Court or those of any other Court of Appeals. The Court of Appeals'

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[15] Petitioner attempts to create "conflicts" by ignoring the factual and procedural differences between cases it cites and the case below. These are not the sort of genuine, irreconcilable conflicts of law which might support Supreme Court review. *See, e.g., Layne & Bowler Corp. v. Western Well Works, supra.*

ruling on the legal meaning and effect of a contract is inappropriate for Supreme Court review since, as petitioner itself concedes, the Court does not sit to interpret the state law of contracts. (Pet. 27.) Moreover, and in any event, Supreme Court review of the lower court's construction of the terms of specific agreements would not be appropriate because the Court does not sit "to review evidence and discuss specific facts," *United States v. Johnston*, 268 U.S. 220, 227 (1925); *Texas v. Mead*, 465 U.S. 1041 (1984), or even to correct simple errors by the lower courts. *Ross v. Moffit*, 417 U.S. 600, 616-17 (1974).

CONCLUSION

For all of the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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July 14, 1986